No. 00-1000

COPY

IN THE SUPREME COURT OF THE UNITED STATES

IMMIGRATION AND NATURALZATION SERVICE,
Petitioner,

v.

BE HUU NGUYEN,
Respondent,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF CERTIORARI**

Quin Denvir
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For the Eastern District of California

Daniel Broderick
Chief Assistant Federal Defender

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BE HUU NGUYEN

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## QUESTION PRESENTED FOR REVIEW

Whether, under 8 U.S.C. §1231(a)(6), the Attorney General has the statutory authority to indefinitely detain a long-time resident alien of the United States beyond the 90-day removal period even if the deportation order cannot be effectuated in the reasonably foreseeable future.

Whether, if the Attorney General has the statutory authority to detain a long-time resident alien of the United States without time limitation under U.S.C. §1231(a)(6), that provision violates Be Huu Nguyen's Fifth Amendment Due Process rights because his deportation cannot be effectuated in the reasonably foreseeable future and, even if his deportation was foreseeable, his detention for dangerousness alone is unconstitutional.[1]

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[1]Neither the District Court, nor the Court of Appeal reached the due process issue raised by Petitioner.

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## OPINIONS BELOW

The petition for *certiorari* correctly cites to the unreported district court and Court of Appeals opinions below. App. A&B to Pet. for Cert. 1a - 4a.

## STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The petition for *certiorari* correctly cites the statutory and regulatory provisions involved in the case, 8 U.S.C. §1231(a)(6), 8 C.F.R §241.4, and § 1231(a)(3). The additional statutory provision governing Mr. Nguyen's release is 8 U.S.C. §1253(b) which provides:

> An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $ 1,000 or imprisoned for not more than one year, or both.

The constitutional provision involved is the Fifth Amendment Due Process Clause

which provides, in relevant part: "No person shall ... be deprived of life, liberty or property, without due process of law[.]"

**STATEMENT**

The lower court opinions correctly set forth the facts of the case and the procedural background. Pet. for Cert. 1a - 4a.

By writ of habeas corpus, Mr. Nguyen challenged on statutory and federal constitutional grounds, his ongoing detention by the INS because his deportation order cannot be effectuated in the reasonable foreseeable future, if ever. Both of the lower courts ruled in Mr. Nguyen's favor, and Mr. Nguyen was released from detention into INS supervision in May, 2000. The Court of Appeals affirmed the grant of Mr. Nguyen's writ of habeas corpus based on the circuit's decision in *Ma v. Reno*, 208 F.3d 815 (9th Cir.) *Pet. reh'g denied* (June 2, 2000), *cert. granted,* 121 S. Ct. 297, 69 USLW 3086 (U.S. Oct. 10, 2000) (No. 00-38). In light of the grant of *certiorari* in *Ma*, Mr. Nguyen waived his right to file a Brief in Opposition. On February 5, 2001 a response to the Petition of Certiorari was requested by this Court.

**ARGUMENT**

The questions presented by this case are whether the Attorney General has the statutory authority to detain a long-time resident alien of the United States whose deportation order cannot be effectuated in the reasonably foreseeable future, if ever, and if so, whether that detention runs afoul of Mr. Nguyen's substantive and procedural due process rights under the Fifth Amendment of the United States Constitution. These same issues are presented in *Ma v. Reno, supra,* and *Zadvydas* v. *Underdown,* 185 F.3d 279 (5th Cir. 1999), *cert. granted,* 121 S. Ct. 297, 69 USLW 324, 69 USLW 3257 (U.S. Oct. 10, 2000) (No. 99-7791), in which the Court granted *certiorari* on October 10, 2000 and heard oral argument on February 21, 2001.

Accordingly, Mr. Nguyen does not waive any objections to the government's recitation of the proper legal analysis in his, however, case because Mr. Nguyen has been released from detention, he agrees with the government that consideration of the government's petition in this case should be held pending the Court's decision in *Ma* and *Zadvydas*.

**CONCLUSION**

The petitioner's petition for *certiorari* should be held pending this Court's decision in *Reno v. Ma,* No. 00-38, and *Zadvydas v. Underdown,* No. 99-7791, and then affirmed or remanded as appropriate in light of the decisions in those cases.

Respectfully submitted,

Linda Harter
Assistant Federal Defender

Daniel Broderick
Chief Assistant Federal Defender
Counsel of Record

Quin Denvir
Federal Defender for the
Eastern District of California

Counsel for Respondent, Be Huu Nguyen

March 2, 2001

No. 00-1000

IN THE SUPREME COURT OF THE UNITED STATES

IMMIGRATION AND NATURALZATION SERVICE,
Petitioner,

v.

BE HUU NGUYEN,
Respondent,

**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

The Respondent Be Huu Nguyen, pursuant to Supreme Court Rule 39 and 18 U.S.C. § 3006A(7), asks leave to file his response by Respondent to Petition for Writ of *Certiorari* to the United States Supreme Court without prepayment of costs, and to proceed *in forma pauperis*.

On March 14, 2000, the Federal Public Defender for the Eastern District of California was appointed by the United States District Court for the Eastern District of California to represent Be Huu Nguyen in the underlying civil case and on appeal to the Ninth Circuit Court of Appeals. This appointment was made pursuant to the Criminal Justice Act, 18 U.S.C. §3006A(a)(2)(b).

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WHEREFORE, the respondent, by and through the undersigned, respectfully prays for leave to proceed in the Supreme Court of the United States *in forma pauperis*.

DATED this 5th day of March, 2001.

Respectfully submitted,

Linda Harter
Assistant Federal Defender

Daniel Broderick
Chief Assistant Federal Defender
Counsel of Record

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Attorneys for Respondent Be Huu Nguyen

No. 00-1000

**CERTIFICATE OF SERVICE**

IN THE SUPREME COURT OF THE UNITED STATES

IMMIGRATION AND NATURALZATION SERVICE,
Petitioner,

BE HUU NGUYEN,
Respondent,

I, Linda Harter, being first duly sworn, deposes and say:

On March 2, 2001, I, a member of the Bar of this Court, caused the **Response by Respondent to Petition for Writ of Certiorari and the Motion for Leave to Proceed in Forma Pauperis** to be served on all parties required to be served in compliance with Supreme Court Rule 29.3, by depositing the documents, first-class postage prepaid, in a United States mailbox on March 2, 2001, addressed to counsel as follows:

Continued on next page

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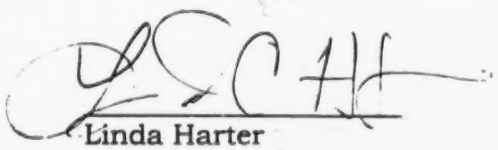
Served pursuant to Rule 29.4(a) & 29.5(b)

DATED: March 2, 2001



Linda Harter